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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,896	06/21/2001	Ignacio Larrain	112843-25	2983

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EXAMINER

DESANTO, MATTHEW F

ART UNIT PAPER NUMBER

3763

DATE MAILED: 10/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/681,896

Applicant(s)

LARRAIN ET AL.

Examiner

Matthew F DeSanto

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 12 & 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I in Paper No. 8 is acknowledged.
2. Claims 12 and 13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3. Claims 1 – 7, 9-11, 14, 17, 19 and 20 rejected under 35 U.S.C. 102(b) as being anticipated by Richmond (USPN 4946448).

Richmond discloses a valve system (12) with an inlet (34), and outlet (34), a flexible membrane (84), which deforms under pressure, and has a perforation (86) for fluid to pass through, (Figures 2 and 3, and entire reference), and has a cracking pressure of .10 bar to .20 bar. (Column 6, lines 47-55).

As to claim 5, wherein the valve has a support associated with the flexible membrane. (78). (Figures 2 and 3).

As to claim 6, wherein the valve includes a piston having a mushroom shaped head. (84). (Figures 2 and 3).

As to claims 7, 14, and 17, wherein the valve is in communication with a pump and administers fluid to a patient. (Column 1, lines 48-65).

4. Claims 1, 2, 3, 5, 7, 9, 11, 14, and 17-20 rejected under 35 U.S.C. 102(b) as being anticipated by Edwards et al. (USPN 5025829).

Edwards et al. discloses a check valve with a cracking pressure of approximately .10 bar to .20 bar, wherein the valve comprises a flexible membrane (18) with supports (28) and the valve is used in combination with a peristaltic pump to infuse fluid into a patient. (Figures 1, 3, 4 and 5, and Column 1, line 22-30, Column 4, lines 36-53).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-11 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richmond as applied to claims 1 – 7, 9-11, 14, 17, 19 and 20 above, and further in view of Cordner, Jr. et al. (5244463) and Minshall et al. (5009654).

Richmond disclosed the claimed invention with a pump and a fluid being administered to a patient but failed to disclose the specific pump used and the specific fluid that will be passed through the valve. Since Richmond disclosed that any pump and any fluid can be used in accordance with the valve, it would have been obvious to

combine the references since it is well known in the art to use a rotary peristaltic pump with a check valve such as shown with Minshall et al. (Column 5, line 13-26) and using a pump with a check valve when delivering nutrition to a patient, such as shown with Cordner, Jr. et al. (Column 1, lines 54-64, and entire reference).

Therefore it would have been obvious to combine Richmond with Cordner, Jr. et al. and Minshall et al. to obtain the invention as specified in claims 1-11 and 14-20.

7. Claims 1, 2, 3, 5, 7, 8, 9, 11, 14 -20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. as applied to claims 1, 2, 3, 5, 7, 9, 11, 14, and 17-20 above, and further in view of Cordner, Jr. et al. (5244463) and Minshall et al. (5009654).

Edwards et al. disclosed the claimed invention with a pump and a fluid being administered to a patient but failed to disclose the specific pump used and the specific fluid that will be passed through the valve. Since Edwards et al. disclosed that any pump and any fluid can be used in accordance with the valve, it would have been obvious to combine the references since it is well known in the art to use a rotary peristaltic pump with a check valve such as shown with Minshall et al. (Column 5, line 13-26) and using a pump with a check valve when delivering nutrition to a patient, such as shown with Cordner, Jr. et al. (Column 1, lines 54-64, and entire reference).

Therefore it would have been obvious to combine Edwards et al. with Cordner, Jr. et al. and Minshall et al. to obtain the invention as specified in claims 1, 2, 3, 5, 7, 8, 9, 11, and 14 -20.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 1-703-305-3292. The examiner can normally be reached on Monday-Friday 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 1-703-308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are 1-703-872-9302 for regular communications and 1-703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 1-703-308-0858.



Matthew DeSanto
Art Unit 3763
October 1, 2002



ANH TUAN T. NGUYEN
PRIMARY EXAMINER

10/30/02